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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,623	02/22/2002	Kenneth Brincat	52194-00002	4453
7590	07/14/2004		EXAMINER	
Stanley R. Moore, Esq. Jenkens & Gilchrist, P.C. Suite 3200 1445 Ross Avenue Dallas, TX 75202-2799			NICOLAS, FREDERICK C	
			ART UNIT	PAPER NUMBER
			3754	
			DATE MAILED: 07/14/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/082,623	BRINCAT, KENNETH
	Examiner	Art Unit
	Frederick C. Nicolas	3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 February 2004.
- 2a) This action is **FINAL**.                                   2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 14 and 39-49 is/are pending in the application.
- 4a) Of the above claim(s) 14 and 39 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 40-49 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 14 and 39-49 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 40-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Schwartzman 3,592,365.

Schwartzman discloses a three-part refillable container (10) adapted for selective filling and discharge of select contents (col. 1, ll. 58-62 and as seen in Figure 1), which comprises a first generally cylindrical portion (149) adapted for selectively sealing the contents of the container within the container and being formed with threads (181) along an inner surface thereof, a second portion (44) adapted for coupling to the first portion and including a generally cylindrical discharge portion of a first diameter and being formed with threads (46) along an outer surface thereof and adapted for threaded engagement with the threads of the first portion (col. 2, ll. 25-31), a generally cylindrical lid portion (38) of a constant second diameter and being formed with threads (40) along an inner surface thereof, and the second diameter being substantially larger than the first diameter for facilitating the selective filling of the container as seen in Figure 1, a third portion (12) adapted for the filling of the third portion with the select contents and including a mouth portion (52), the mouth portion including threads (36) along an outer surface thereof adapted for threaded engagement with the second portion, and a body

portion of a third diameter for housing the contents of the container; wherein the second portion is readily removable by threaded disengagement from the third portion for facilitating the pouring of contents into the third portion through the substantially enlarged opening thereof relative to the discharge opening of the second portion as seen in Figure 1, wherein the second diameter of the lid portion is equal to the third diameter of the body portion as seen in Figure 1.

***Response to Arguments***

3. Applicant's arguments filed 2/26/2004 have been fully considered but are moot in view of the new ground(s) of rejection. Any remaining arguments have been fully addressed in the above rejection.

***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fillmore et al. 6,308,862 and Fillmore et al. 6,305,577 disclose other types of refillable container.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (703)-305-6385. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mancene L. Gene, can be reached on 703-308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
July 3, 2004

(Fir) 7/3/04

  
Gene Mancene  
Supervisory Patent Examiner